

# TRANSPORTATION CORPORATION OF AMERICA

P. O. BOX 218 CHICAGO HEIGHTS, ILLINOIS 60411

February 10, 1978

TELEPHONES:  
Chicago-568-5000  
Chicago Hts.-757-5900

Interstate Commerce Commission  
Recordation Clerk  
Room 1211  
12th & Constitution Ave., N.W.  
Washington, D.C. 20423

9241  
RECORDATION NO. .... Filed & Recorded

FEB 16 1978 -2 25 PM

INTERSTATE COMMERCE COMMISSION

Gentlemen:

Enclosed for recordation under the provision of Section 20(c) of the Interstate Commerce Act, as amended, are seven (7) copies of: Agreement No. 010578 and Rider No. 01057801 dated January 20, 1978 between Transportation Corporation of America and Minnesota Dakota and Western Railway Company for 100 Bulkhead Flat Cars. The car numbers involved in the equipment which is the subject of the enclosed document are as follows: MD&W 1100 thru 1199, both inclusive.

The names and address of the parties hereto are as follows:

Transportation Corporation of America  
P. O. Box 218  
Chicago Heights, IL 60411

Minnesota, Dakota & Western Railway  
One Jefferson Square  
Boise, Idaho 83728

The undersigned is the Vice President - Finance of Transportation Corporation of America and has knowledge of the matters set forth within the enclosed documents. Kindly record and thereafter return to Transportation Corporation of America, P. O. Box 218, Chicago Heights, IL 60411, the remaining six (6) copies of the enclosed document, marked "Recorded".

Attached hereto is a remittance in the sum of \$50.00 covering the required Recording Fee.

Very truly yours,

TRANSPORTATION CORPORATION OF AMERICA



S. D. Christianson  
Vice President - Finance

dk  
Enclosures

RECEIVED  
FEB 16 2 22 PM '78  
CERTIFICATION UNIT

8-047A122

NO  
Date FEB 16 1978

Fee \$ 50-

ICC Washington, D. C

This AGREEMENT, No. 0 0573, made an entire into January 20,  
1978, by and between TRANSPORTATION CORPORATION OF  
AMERICA, an Illinois Corporation, Box 218, Chicago Heights, Illinois, (herein  
called "LESSOR") and MINNESOTA, DAKOTA & WESTERN RAILWAY  
COMPANY, ONE JEFFERSON SQUARE, BOISE, IDAHO 83728  
a MINNESOTA Corporation, (herein called "LESSEE")

RECORDATION NO. 9241 Filed & Recorded

**FEB 16 1978 -2 25 PM**

INTERSTATE COMMERCE COMMISSION

WITNESSETH:

Description of  
Leased Cars:

(1) LESSOR agrees to furnish to the LESSEE, and the LESSEE agrees to rent from LESSOR the cars shown on the Rider attached hereto and made a part hereof, and such additional Riders as may be added hereto from time to time by AGREEMENT of the parties and signed by their duly authorized representatives. Each Rider shall set forth a brief description of the car, or cars, covered thereof including such facts as: number of car, car initials and numbers, the A.A.R. or I.C.C. specification, cubic capacity, truck capacity, delivery point, rental, commodity service, term throughout which the cars shall remain in LESSEE'S service, and other pertinent information that may be desired by both parties.

Delivery of Cars:

(2) LESSOR shall deliver the Cars as promptly as is reasonably possible. LESSOR'S obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and LESSOR shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond LESSOR'S control; provided, however, that in no event shall LESSEE be obligated to accept delivery of Cars after July 31, 1978.

Initial delivery shall be f.o.t. International Falls, Minnesota

From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse LESSOR for the payment of, all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention.

Condition of Cars  
Acceptance:

(3) All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and/or specifications contained in Exhibit A; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Within 10 days after Lessor shall give Lessee notice that some or all Cars are ready for initial delivery, Lessee may have its authorized representative inspect such Cars at East Chicago, Indiana and accept or reject them as to condition. Cars so inspected and accepted and any Cars which LESSEE does not elect to inspect shall upon delivery thereof to LESSEE as above provided be conclusively deemed to be accepted and subject to this Lease and to meeting all requirements of this Lease. Lessee shall issue and deliver to Lessor with respect to all Cars accepted, a Certificate of Inspection and Acceptance in the form of Exhibit B.

Use of Cars:

(4) LESSEE agrees to use said Cars within the continental limits of the United States and Canada (any use in Canada shall be incidental and temporary) for the transportation of the commodities stated in the Rider applicable to said cars; and that said cars will at all times be used: (i) in compliance with all lawful acts, rules, regulations and orders; (ii) in conformity with Interchange Rules; (iii) in compliance with the terms and provisions of this Lease; (iv) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (v) only within the continental limits of the United States of America or in Canada; (vi) in such service as will not constitute a "unit train" nor in such service as will employ more than ten percent of the Cars as part of any one train, except as same results from interchange practices beyond Lessee's control, and (vii) further agrees upon the expiration or termination of the rental term of the particular Rider applicable to each such car set forth in such Rider to cause said cars to be returned to Lessor at its plant in Chicago Heights, Illinois, in the same, or as good, condition in which they were furnished, except for ordinary wear and tear. Lessee will not in anyway alter the physical structure of the cars without the approval in writing of LESSOR.

Rent:

(5) LESSEE agrees to pay LESSOR the monthly rental stated in the Rider covering said cars from the date each car is delivered as specified in the Rider, and until cars are delivered to LESSOR upon expiration of the rental term specified in the Rider applicable to such car. Such rentals shall be paid in United States Dollars to TRANSPORTATION CORPORATION OF AMERICA, Box 218, Chicago Heights, Illinois, or such other place as the LESSOR or its Assignees may hereafter direct.

.. Abatement of Rent:

(6) Rental payments on any Car out of service for Repair Work or other work the cost and expense of which is LESSOR'S responsibility under Paragraph 9 from the fifth day after LESSOR has received notice of the need for Repair Work or the date a Car is taken out of service by LESSOR for preventative maintenance until such Car or a Replacement Car is delivered to LESSEE, to a railroad for the account of LESSEE, or is otherwise ready for or is returned to service by LESSEE. In the event rental is abated, then if LESSOR so elects and notwithstanding anything contained in Paragraph 5 to the contrary, the original term of this Lease, as determined in Paragraph 5, shall be extended for a period of time (but not less than one day) determined by dividing the sum of the number of days per Car with respect to which rental was so abated by the number of Cars subject to this Lease on what would otherwise have been the last day of the original Term hereof.

Term of Lease:

(7) This Agreement shall be effective as of the date first set forth hereinabove and shall expire upon expiration of the rental term of the last car, or cars, covered hereunder. The rental term for each car shall be as shown in the Rider covering such car.

(8) LESSEE shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as LESSEE.

Repair and  
Maintenance:

(9)(a) LESSEE shall notify LESSOR within three (3) full business days following knowledge of any damage to any of the cars. LESSOR agrees to pay for the maintenance and repair of said cars to the extent of the requirements of railroad companies; provided it has received notice of the need for repair work as herein provided; and existing Association of American Railroads' rules; but it will not pay for repairs made to said cars in excess of the basis of Association of American Railroads' interchange rules;

(b) No repairs to any of the cars shall be made by the LESSEE for LESSOR'S account without LESSOR'S prior written consent. Upon receipt of notice specifying the location of the Car and its number, extent and nature of the required Repair Work and estimated cost thereof, LESSOR shall thereupon have the option to: (i) require LESSEE to promptly deliver the Car, at LESSOR'S expense, to such place as LESSOR designates for performance of such LESSOR'S Repair Work or to hold same on its lines or on its property to permit LESSOR to make or have made the required Repair Work; (ii) require that LESSEE promptly make or have made the required Repair Work; or (iii) terminate this Lease with respect to

such Car and require its return to LESSOR if, in LESSOR'S sole opinion, it deems such Repair Work to be unsuitable or uneconomical. LESSOR may at any time require LESSEE to return or hold Cars at specified places for any preventative maintenance it elects to do or have done.

(c) LESSOR shall keep the cars in good order and repair, ordinary wear and tear excepted, comply with any additional requirements for safety appliances and construction hereinafter specified by American Association of Railroads and Interstate Commerce Commission and satisfactory for interchange in accordance with Association of American Railroads' rules, and all at its own cost and expense. LESSEE shall be responsible for, shall pay all costs and expenses of and shall cause to be made all Repair Work or other work or materials required by reason of (i) damage or other condition caused by negligence of LESSEE or anyone other than LESSOR; (ii) damage or other condition caused by loading, unloading or use other than as permitted herein; (iii) loss of or damage to interior lading equipment, special interior linings or removable parts; (iv) maintenance to keep such interior lading equipment, special interior linings or removable parts in good, safe operating condition; or (v) Interchange Rules which have not been adopted or promulgated as of the date hereof.

(d) In the event of the loss, destruction or irreparable damage to any of the cars from any cause whatsoever, except while in possession of LESSOR, during the continuance of this Lease, the LESSEE shall promptly and fully inform the LESSOR in regard to such loss, destruction or damage. If any of said cars are damaged or destroyed on any privately owned track, LESSEE shall pay unto LESSOR the cost of repairing such damage, or replacing such lost or destroyed cars. In no case shall that amount exceed the depreciated valuation of such cars as provided for in the Interchange Rules of the Association of American Railroads.

**Substitution of Cars:**

(10) LESSOR may, at any time and from time to time, replace any Withdrawn Cars or Casualty Cars with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to LESSEE at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to this Lease and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Withdrawn or Casualty Cars, or to include any Replacement Cars within the terms and provisions of this Lease and of any other document under which LESSOR has assigned its rights hereunder, as permitted in Paragraph 19 hereof.

stencil the ownership legend on each new car in letters not less than one (1) inch in height, as specified in the attached Rider and immediately replace any such stenciling which becomes illegible, wholly or in part. Should changes or additions be required in the foregoing legend, LESSEE shall make such changes or additions, and the expense thereof shall be borne by the LESSOR. The LESSEE shall keep the cars free from any marking which might be interpreted as a claim of ownership thereof by anyone other than the LESSOR; and will not change, or permit to be changed, the identifying road numbers.

(b) LESSEE represents and warrants that subject cars are now and shall remain throughout the term of this Lease marked and identified in accordance with the car numbers and other identification marks provided for within the Riders which are now and which shall hereafter be attached hereto.

**Inspection and  
Inventory:**

(12) LESSEE shall, upon request of LESSOR, but no more than once every year, furnish to LESSOR its certified inventory of all Cars then covered by this Lease. LESSEE shall allow the LESSOR at its own cost and expense to inspect the cars at any reasonable time or times.

**Payment of Taxes:**

(13) During the term of this Agreement, the LESSEE shall, in addition to the rentals herein specified, pay all sales, use, rental and excise taxes, personal property taxes, assessments and assessments or levies made against LESSOR or which LESSOR shall pay on account of its ownership of the Cars (other than rental income), LESSEE will promptly pay or reimburse LESSOR for same, whatsoever, whether payable by the LESSOR or the LESSEE, on or relating to the cars leased hereunder; the LESSEE shall be under no obligation to pay any such tax so long as it is being contested in good faith and by appropriate administrative or legal proceedings and any expense incurred by LESSOR in which LESSEE concurs with respect to contesting the applicability of such sales tax, rental tax or use tax to this Agreement shall be for the account of LESSEE.

**Return of Cars:**

(14) Upon the expiration or upon the termination of this Lease with respect to any Car (other than pursuant to Paragraph 15 hereof), LESSEE shall at its sole cost and expense forthwith surrender possession of such Car to LESSOR by delivering same to LESSOR at Chicago Heights or at such car shop, storage or terminal facility as may mutually be agreed upon by LESSEE and LESSOR. Each Car so surrendered shall be complete with all devices, appliances, appurtenances and parts with which the Cars were initially equipped, in the same or as good condition,

order and repair as when delivered to LESSEE, wear and tear from ordinary use and the passage of time excepted and shall be in need of no Repair Work or other work or materials for which LESSEE is liable under Paragraph 9. Until the delivery of possession to LESSOR pursuant to this Paragraph 14, LESSEE shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and LESSEE under any and all provisions of this Lease as though such termination or expiration had not occurred. LESSEE shall not be responsible for failure to deliver or delays in redelivering Cars due to labor difficulties, fire delays and defaults in carriers and acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond LESSEE'S control. If LESSOR shall so request by notice delivered prior to surrender of possession of such Car as above provided, LESSEE shall provide suitable storage for such Car for a period of ninety (90) days from the date of expiration or termination and inform LESSOR of the place of storage and the reporting number of the Car there stored. Delivery in storage shall constitute delivery of possession for the purpose of this Paragraph 14 and such storage shall be at the risk and expense of LESSOR if stored on trackage other than that owned by LESSEE. Upon termination of the storage period or upon request of LESSOR prior thereto, LESSEE shall cause the Car to be transported to LESSOR as above provided.

Indemnities - Patent  
Covenants

(15) LESSEE agrees to indemnify LESSOR and hold it harmless from any loss, expense or liability which LESSOR may suffer or incur from any change, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease and without regard as to how such charge, claim, proceeding, suit or other event arose, including without limiting the generality of the foregoing, excepting only any such loss, expense or liability which arises as to a Car in LESSOR'S shop or possession. LESSOR agrees to indemnify LESSEE and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by LESSOR upon delivery of a Car or upon the making of repairs thereto by LESSOR, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of LESSEE'S specifications. The term "LESSOR" shall mean and include a subsidiary, parent or affiliated corporation or LESSOR for all purposes, of this Paragraph 15. LESSEE'S indemnity shall not eliminate the specific rights given LESSEE under any manufacturer's warranty assigned to it pursuant to Paragraph 16. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same,

give the other prompt notice of any claim or liability hereby indemnified against.

**Warranty:**

(16) LESSOR makes no warranty or representation of any kind, either express or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a particular purpose extending beyond the description in Exhibit A, or the design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by LESSEE hereunder; and LESSOR shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any matter arising from, out of, in connection with or related to a breach of warranty or representation. LESSOR agrees to assign to LESSEE such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at LESSEE'S expense cooperate with LESSEE and take such action as may be reasonably requested to enable LESSEE to enforce such rights.

**Liens:**

(17) LESSEE shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under LESSEE which may be a cloud upon or otherwise affect LESSOR'S title, including, but not limited to liens or encumbrances which arise out of any suit involving LESSEE, or any act, omission or failure of LESSEE or LESSEE'S failure to comply with the provision of this Lease, and LESSEE shall promptly discharge any such lien, encumbrance or legal process.

**Insurance:**

(18) LESSEE shall, at its own cost and expense, with respect to each Car at all times maintain and furnish LESSOR with evidence of liability insurance protecting LESSOR, in such companies, in such amounts, with such endorsements, and covering such hazards as LESSOR shall from time to time request. LESSEE'S obligation to maintain insurance with respect to each Car shall commence on the earlier of (i) the Delivery date of such Car or (ii) the date on which the manufacturer or vendor thereof shall cease to bear the risk of loss with respect thereto (whether or not such Car shall at such time have become subject to lease pursuant hereto), and shall continue until the Lease term thereof terminates and, if such Car is required hereunder to be returned to LESSOR, until such return, LESSEE shall cooperate and, to the extent possible, cause others to cooperate with LESSOR and all companies providing any insurance to LESSEE or LESSOR or both with respect to the Cars.

**Subleasing:**

(19) LESSEE will not sub-lease said cars or assign any of its rights hereunder, without the written consent of the LESSOR.



LESSOR will not assign its maintenance and repair obligations or other performance under this Lease to any other Leasing Company without notice to and consent of LESSEE; such consent will not unreasonably be withheld. Except for the above all rights of LESSOR hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to LESSEE. This Lease and LESSEE'S rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by LESSOR, provided only that so long as the LESSEE is not in default under the Lease, the Cars shall not be repossessed. If LESSOR shall have given written notice to LESSEE stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by LESSEE hereunder, LESSEE shall make such payments to the designated assignee, when required.

**Remedies:**

(20) Upon the happening of any of the events as hereinafter defined, the LESSOR or its Assignee may then, or at any time thereafter, take possession of the cars and any accessions thereto, wherever same may be found, and, at the election of the LESSOR or the Assignee as the case may be, either:

(a) declare the Agreement terminated, in which event all rights of the parties hereunder shall cease except only the obligation of the LESSEE to pay accrued rentals to the date retaking, or;

(b) relet the cars as agent of the LESSEE, apply the proceeds of such reletting first to the expenses that may be incurred in the retaking and delivery of the cars to the new LESSEE, then to the payment of the rent due under this Lease, and the LESSEE shall remain liable for any rents remaining due after so applying the proceeds so realized, and the LESSEE covenants and agrees to pay said deficit monthly as the same may accrue.

**Default:**

(21) The happening of any of the following events shall be considered an "event of default" hereunder:

(a) nonpayment of the LESSEE of any payment ten (10) days after LESSOR has given LESSEE notice that a payment pursuant to this Agreement is delinquent.

(b) failure of the LESSEE to comply with or perform, any of the other terms and conditions of this Agreement within twenty (20) days after receipt of written notice from the LESSOR, or its Assignee, demanding compliance therewith and performance thereof.

Filing:

(22) The LESSOR intends to cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20(c) of the Interstate Commerce Commission Act. The LESSEE shall from time to time do and perform any other act, and execute, acknowledge, deliver, file, register and record any and all further instruments required by law, or requested by LESSOR, for the purpose of protecting its title and rights, or for the purpose of carrying out the intention of this Agreement, and the LESSEE will promptly furnish to LESSOR certificates or other evidences all such filing, registering and recording in form satisfactory to LESSOR. The LESSOR shall promptly reimburse LESSEE for any out-of-pocket expenses it may so incur.

Miscellaneous:

(23) It is mutually agreed that the time of payment of rentals is of the essence of this contract and that this agreement and any Rider now and hereafter entered into is subject and subordinate to any Chattel Mortgage or Conditional Sale Agreement on the cars heretofore or hereafter created and to the rights of any Trustee under any Equipment Trust heretofore or hereafter established by the LESSOR.

(24) The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, in which state it has been executed and delivered.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed and sealed by their respective corporate officers and duly attested, as to the date first above written.

(Corporate seal)

TRANSPORTATION CORPORATION OF AMERICA (Lessor)

ATTEST:

By: [Signature]  
its Vice President

[Signature]  
Assistant Secretary

(Corporate Seal)

OK/S MINNESOTA DAKOTA & WESTERN RAILWAY COMPANY

(Lessee)

ATTEST:

By: [Signature]  
its Vice President

[Signature]  
Assistant Secretary

EXHIBIT B

Leased dated January 20, 1973, BY AND BETWEEN TRANSPORTATION CORPORATION OF AMERICA (Lessor) and MINNESOTA DAKOTA AND WESTERN RAILWAY COMPANY (Lessee)

CERTIFICATE OF INSPECTION AND ACCEPTANCE

\_\_\_\_\_, 19\_\_

Transportation Corporation of America  
P. O. Box 213  
Chicago Heights, IL 60411

Gentlemen:

The undersigned, being a duly authorized inspector for Lessee, hereby certifies that he has made an inspection of \_\_\_\_\_ (\_\_\_\_\_) Cars bearing numbers as follows:

or has, on behalf of Lessee, elected to forego such inspection all as provided in the Lease, and hereby accepts such Cars for the Lessee pursuant to the Lease; that each of said Cars is plainly marked in stencil on both sides of each Car with the words:

TRANSPORTATION CORPORATION OF AMERICA, OWNER AND LESSOR:  
CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY  
OF CHICAGO, MORTGAGEE

in readily visible letters not less than one inch (1") in height; and that each of said Cars conforms to, and fully complies with the terms of said Lease and is in condition satisfactory to the Lessee.

OKPS

*Continental*  
\_\_\_\_\_  
Lessee

TRANSPORTATION CORPORATION OF AMERICA

RIDER NO. 01057801

TO TCA LEASE NO. 010578 dated January 20, 1978

IT IS HEREBY AGREED THAT, effective January 20, 1978, this Rider shall become a part of TCA LEASE NO. 010578 between TRANSPORTATION CORPORATION OF AMERICA and the MINNESOTA DAKOTA AND WESTERN RAILWAY COMPANY dated January 20, 1978, and the cars described herein shall be placed in MINNESOTA DAKOTA AND WESTERN RAILWAY COMPANY service, subject to the terms and for the rental set forth below:

CAR INITIAL AND NUMBERS:	MD&W 1100-1199 both inclusive
CAR OWNER'S MARKS:	TRANSPORTATION CORPORATION OF AMERICA, OWNER AND LESSOR: CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, MORTGAGEE
CLASS OF CAR:	61'1½" Bulkhead Flat Cars (56'8")
NUMBER OF CARS:	100
TRUCK CAPACITY:	100-Ton
BASE RENTAL:	\$475 per month
DELIVERY PERIOD:	First Quarter, 1978
DELIVERY POINT:	International Falls, Minnesota
COMMODITY SERVICE:	Forest Products
ESCALATION OF MAINTENANCE:	Commencing with the 13th month, maintenance will be escalated in direct proportion to the published AAR Interchange rate. The base rental rate will increase \$1.20 per car, per month, for each 1 percent or fraction thereof increase of the AAR rate over the \$25.47 per hour rate in effect at January 1, 1978.
FRA INSPECTION:	Any inspection charges resultant from FRA requirements are not covered by this lease and are for the account of the LESSEES.
TERM AND LOADING:	

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Bulkhead Flat Cars as provided herein. The term of lease with respect to all of the Bulkhead Flat Cars described in this Rider shall be for fifteen (15) years commencing upon the date when all Bulkhead Flat Cars on such Schedule have been delivered as set forth in Sections 2 & 3 (page 1 and 2) of this Lease.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five (5) consecutive periods of twelve (12) months each with respect to all of the Bulkhead Flat Cars described on each Schedule; provided, however, Lessor or Lessee may terminate this Agreement as to all, but not fewer than all, of the Bulkhead Flat Cars on any such Schedule by Written Notice delivered to the other not less than twelve (12) months prior to the end of the initial Lease term or any extended Lease term.

C. Lessee shall give preference to Lessor and shall load the Bulkhead Flat Cars leased from Lessor prior to loading Bulkhead Flat Cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks, and provided further, Lessee shall not have to provide Lessor Bulkhead Flat Cars priority at the expense of unreasonably disrupting Lessee's normal operations.

#### RENT:

D. Rent payment and collection  
Monthly rental payments shall be payable on the tenth day of each calendar month. Lessor and Lessee recognize and agree that since car hire settlements and payments are approximately 90 days in arrears, the first monthly payment will be due on the tenth day of that month immediately following 90 elapsed days from delivery of the last Car(s) covered by this Rider. Lessor is entitled to all car rental payments on Cars covered by this Rider remitted to the Lessee subsequent to the termination of this Rider.

Lessor is to be compensated for the delay in receipt of initial payment by withholding from Lessee's share of payments as specified in Paragraph E (ii) all monies until a sum of \$3,200 has been reached, which sum shall be considered the full and total compensation for the delay of the initial payment.

E. Rent computation  
Lessee agrees to pay the following as rent to Lessor for the use of the Cars.  
Lessor agrees to accept the following as rent on the Cars.

(i) Lessor shall receive monthly all payments made to Lessee by all railroad companies for their use of handling of the Cars, including but not limited to mileage charges, straight car-hire payments and incentive car-hire payments (all of which payments made to Lessor are hereinafter collectively referred to as "payments").

(ii) In the event payments received under Paragraph E (i) exceed Lessor's Base Rental in any calendar year, Lessor shall retain an amount equal to the Lessor's Base Rental plus an amount equal to one-half of the payments earned in excess of the Lessor's Base Rental. The balance of the payments shall be refunded to Lessee.

(iii) The rental charges payable to Lessor by Lessee shall be paid from the payments received by Lessee in the following order until Lessor receives the amounts due it pursuant to this section: (1) straight car-hire payments; (2) mileage charges; and (3) other. Such rental charges shall not be cumulative from year to year.

(iv) In the event damage or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules--Freight and the appropriate amount due as a result thereof is received by Lessor, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car-hire payments ceased.

F. The calculations required above shall be made annually. Any amounts payable to the Lessee by the Lessor pursuant to Paragraph E shall be paid promptly following such calculation. The account will be reconciled each calendar year on December 31.

#### TERMINATION:

G. In the event utilization in any calendar quarter is less than Lessor's Base Rental, Lessor may, at its option and upon not less than 30 days prior Written Notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine; provided Lessee shall have the option at the Lessee's sole discretion to pay Lessor a sum of money equal to the rent lost by Lessor as a result of the Car's failing to maintain said utilization rate and Lessor shall after such payment not terminate this Agreement until such time as the utilization rate at the end of a subsequent quarter is less than Lessor's Base Rental.

H. Lessor may, at its option, terminate this Agreement if the Interstate Commerce Commission shall, at any time, issue an order reducing car-hire rates. Lessor or Lessee may, at its option, terminate this Agreement if the Interstate Commerce Commission shall determine that Lessee may not apply its car-hire receipts in payment of the rental charges set forth in this section. Lessee may, in any event, terminate this Agreement if for any reason governmental regulations or orders prohibit the Lessee from making the payments described above.

I. If Lessee gives Lessor notice of a strike at their loading points, this Agreement shall not be terminated unless the utilization rate computed for a three-month period commencing one month after the strike occurs shall be less than Lessor's Base Rental and the Lessee does not choose to exercise its option as provided in Termination Paragraph G, provided Lessee will use its best efforts to obtain maximum utilization during the period of any such strike. In computing such utilization rate, Lessor may terminate this Agreement after giving the Lessee the right to exercise its option under Termination Paragraph G if at any time following the strike date until the strike terminates, the number of days that the Cars have not earned hire payments on foreign railroads is such as to make it mathematically certain that the utilization cannot be equal to or greater than the Lessor's Base Rental.

IN WITNESS WHEREOF, the officers hereto have caused this instrument to be executed and their corporate seals hereto affixed and duly attested, as of the 10th day of February, 1978.

(Corporate Seal)

TRANSPORTATION CORPORATION OF AMERICA (LESSOR)

ATTEST:

[Signature]  
Assistant Secretary

By:

[Signature]  
Its Vice President

(Corporate Seal)

MINNESOTA DAKOTA & WESTERN RAILWAY COMPANY (LESSEE)

ATTEST:

[Signature]  
Assistant Secretary

[Signature] By:

[Signature]  
Its Vice President